In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-366

VILLAGE OF WALTHILL, NEBRASKA, ET AL., PETITIONERS

v.

OMAHA TRIBE OF NEBRASKA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

1. The Omaha Tribe of Nebraska, its tribal council and its membership, represented by the United States attorney, brought this action seeking a declaratory judgment and an injunction prohibiting certain village, county, and state officials in Nebraska from attempting to exercise criminal jurisdiction within the Tribe's reservation except as to traffic offenses. The facts are fully set forth in the opinions of the district court (Pet. App. 21–51) and the court of appeals (Pet. App. 17–20), on which we primarily rely. Essentially, in 1953, Public Law 280, 67 Stat. 588, conferred on Nebraska civil and criminal jurisdiction to the extent provided by that statute over all

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Omahas. It rejected the State's argument that the failure of Nebraska's legislature to present to the Governor the 1969 retrocession resolution nullified the retrocession (Pet. App. 32–39). The court further held that the Secretary acted properly when he accepted a retrocession only as to the Omaha Tribe which consented to the retrocession (Pet. App. 39–46). The court also rejected the State's argument that it had jurisdiction over the Reservation under the Land Allotment Act of 1882, 22 Stat. 341, independent of the grant to it and its subsequent retrocession of jurisdiction under Public Law 280. The court pointed out that that Act granted no jurisdiction over the Omaha Reservation to the State until all land in the Reservation had been alloted and patented to the allotees, which has never occurred (Pet. App. 48). The court of appeals affirmed in a *per curiam* opinion (Pet. App. 17–20).

2. In its petition in this Court the State has apparently abandoned its argument that its 1969 retrocession resolution was invalid. The State now argues only that the United States was not free under that resolution to accept jurisdiction over the Omaha Reservation while rejecting it over the Winnebago Reservation (Pet. 13–14). The resolution, however, contained no such limiting stipulation (Pet. App. 112–114). And the Nebraska Legislative Council, authorized by the resolution to implement it, expressly accepted federal assumption of jurisdiction over the Omaha Reservation alone (Pet. App. 27–28, 53–54). Moreover, since the principal purpose of this part of the 1968 amendment to Public Law 280 is to assure

that Indian wishes are taken into account in changes of jurisdiction over their land, it was appropriate for the United States, in its trust responsibility to the Omaha and Winnebago Tribes, to accept the retrocession as to the Omahas, who approved it, but not as to the Winnebagos, who expressed their desire to remain under state jurisdiction. Nothing in 25 U.S.C. 1323 requires the United States to accept a retrocession against the wishes of a Tribe, and nothing in the State's resolution conditioned the retrocession of jurisdiction over one Tribe on the government's acceptance of jurisdiction over the other.

3. Petitioner argues (Pet. 11–13) that this Court should grant certiorari to end the "confusion" that exists because a different result was reached by the Nebraska Supreme Court in *State* v. *Goham,* 187 Neb. 35, 187 N.W. 2d 305 (Pet. App. 63). The courts below in the present case, however, correctly held that the question whether the State has retroceded jurisdiction over an Indian reservation to the United States under an Act of Congress (25 U.S.C. 1323) is a question of federal law and have ruled that the retrocession is valid. Both the decision of the district court and the decision of the court of appeals in this case were entered after the state court's decision in *State* v. *Goham, supra,* and there is no reason to believe that the state courts will not accept their determination of this issue of federal law. Further review by this Court of the present case is thus unnecessary.

4. Petitioner's remaining arguments are insubstantial. Petitioner again urges that Nebraska had jurisdiction over the Omahas under the Allotment Act of

1882 independent of the jurisdiction it was ceded and retroceded under Public Law 280 as amended (Pet. 15). This contention was fully considered and rejected by the courts below (Pet. App. 19–20, 46–53), on whose opinions we rely. The argument that Congress does not have the constitutional power to legislate on whether jurisdiction over Indian reservations shall be exercised by a State is, of course, without merit. See *United States* v. *Kagama*, 118 U.S. 375.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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